ranty of serviceableness usually given, as insuring against personal injuries, on the ground that the nature of the article sold is such that a vendee might reasonably have had in mind the probable danger to life and limb which a break-down would cause, and might, therefore, have regarded a warranty of durability as an agreement to indemnify him in case of personal injury. This rule was contended for in the dissenting opinion of Bartlett, J. Third, the law may raise a special warranty against personal injuries proximately resulting from defects; see *Mowbray* v. *Merryweather,* L. R. 2 Q. B. 640. Fourth, it would seem that the question might be viewed from the standpoint of tort instead of contract, and the manufacturer held, either on the ground of fraud or negligence, for the injuries occasioned. The courts have taken this position where third persons, having no privity of contract with the manufacturer, have been injured because of defects, and it would seem that the man who buys direct from the manufacturer ought to be in no worse position. See 4 MICH. LAW REV. 400. No cases have been found involving the exact conditions here disclosed, probably owing to the fact that the indisposition of the courts to award consequential damages has been well recognized. As bearing upon their general attitude as to strictness of interpretation see *Jones* v. *Ross,* 98 Ala. 448, 13 So. Rep. 319; *Hoe* v. *Sanborn,* 36 N. Y. 98; and *Jones* v. *George,* 56 Tex. 149, 42 Am. Rep. 689; *French* v. *Vining,* 102 Mass. 132, 3 Am. Rep. 440; *Swain* v. *Schieffelin,* 134 N. Y. 471, 18 L. R. A. 385; *White* v. *Miller,* 71 N. Y. 118, 27 Am. Rep. 13, for a more liberal view.

STATUTE OF FRAUDS—CONTRACT FOR EXCHANGE—ORAL AUTHORITY OF AGENT.—Suit in Equity to enforce a written contract to exchange lands against the assignee of one of the original promisors. The contract was made and signed by agents acting under parol authority. *Held,* parol authority of agents entitled them to execute a written contract binding their principals to an exchange of lands. *Hopper et ux.* v. *McAllum* (1906), — Miss. —, 40 So Rep. 2.

There is no opinion in the case except a reference to *Lobdell* v. *Mason,* 71 Miss. 937, 15 So. 44, which is said to entirely control it. The facts in the *Lobdell case* are, however, somewhat different. Here an action at law for forcible entry and detainer was brought by the principal against a person in possession under a lease from an agent whom the plaintiff had orally authorized. The court held that the lease was good for the year and operated as a contract to lease for the rest of the term. Of course authority for the execution of a sealed instrument must be given by an instrument under seal, but the rule does not extend to matters where the agent must execute a writing, i. e., the authority need not be in writing unless the statute requires. MECHEM, OUTLINES OF AGENCY, § 65, and the Mississippi court in the *Lobdell case* holds that the requirement that an agent's authority to execute a contract must be in writing means "Contracts under and by virtue of which rights in land pass to and are vested in the party claiming thereunder, and which are usually spread upon the records under the recording acts as muniments of title." The court in the principal case must have argued that if an oral contract to lease would be enforced a con-

tract to sell would also. REED, STATUTE OF FRAUDS, Vol. II, § 370, explains the Mississippi doctrine by saying that "where one party has performed it would be manifestly inequitable to give him neither restitution nor specific performance." But the facts of the principal case show that no doctrine of equitable estoppel here arises. If the contract were not enforced no harm is done for the parties are in statu quo. Even in Pennsylvania, which has heretofore been considered most extreme, possession is required to take it out of the statute of frauds. *Lee* v. *Lee,* 9 Pa. St. 177.

WILLS—IRREGULAR DOCUMENTS SHOWING TESTAMENTARY INTENT—BEQUESTS FOR MASSES.—Decedent, a woman seventy-six years old, executed a note in favor of her daughter or $500, payable in five years and secured by a mortgage on real estate. At the same time she directed the scrivener, a justice of the peace, to make a memorandum, which she signed, reciting that this mortgage and note for $500 were given to be "distributed" by the daughter after the decedent's death, $300 to the priest of St. Patricks church for masses for the repose of decedent's soul, $100 as a gift to another sister, and the remainder to be kept by the payee of the note. Suit was brought on the note at maturity, some time after the maker's death. *Held,* (1) that the note and mortgage were not contractual but testamentary and were effective only as a will; (2) that the bequests for the masses were void; and (3) that the gifts to the plaintiff and her sister were valid. *McCourt* v. *Peppard et al.* (1905), — Wis. —, 105 N. W. Rep. 809.

It was contended that the note was not a will but a contract, as it was contractual in form, drawn in apt terms for a present contract, was a definite promise to pay a sum certain at a fixed future date without mention of the contingency of death, and bore interest payable annually. In the absence of facts showing a testamentary intent such an instrument is a contract. An instrument made in the form of a promissory note, but payable after the maker's death, is a promissory note and not a will. *Bristol* v. *Warner,* (1848), 19 Conn. 7; *Price* v. *Jones* (1885), 105 Ind. 543, 5 N. E. Rep. 683, 55 Am. Rep. 230; *Freeser* v. *Freeser* (1901), 93 Md. 716, 50 Atl. Rep. 416; *Garrigus* v. *Society* (1891), 3 Ind. App. 91. In the principal case the court found such evidence of testamentary intent in the age of the maker, the use of the word "keep," and the fact that all the acts specified must necessarily have been done after her death. The instrument though testamentary in character was not executed with the formalities required by the statute, and it does not appear upon what ground the court gave it effect as a will. A direction to pay at decedent's death is not a promissory note but a will, and if not executed in accordance with the statutory requirements is void. *Cover* v. *Stem* (1887), 67 Md. 449. See also ROOD ON WILLS, § 60. It is possible, although it is not so stated, that the court considered the attestation of the mortgage sufficient to meet the statutory requirements, but the holding in that regard seems to be against the weight of authority. *Cover* v. *Stem,* supra. The court without discussion held that the bequests for masses for the repose of the decedent's soul were void, apparently upon the authority of *McHugh* v. *McCole* (1897), 97 Wis. 166, 65 Am. St. Rep. 106, where a similar bequest was held to be void as creating a private trust without naming a definite